

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

NIKKI BOLLINGER GRAE, Individually and) Civil Action No. 3:16-cv-02267
on Behalf of All Others Similarly Situated,)
)
Plaintiff,) Judge Aleta A. Trauger
)
vs.) Magistrate Judge Jeffery Frensley
)
CORRECTIONS CORPORATION OF)
AMERICA, et al.,)
)
Defendants.)
)

**DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL AND RESPONSE TO
LEAD PLAINTIFF'S MAY 15, 2020 MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Local Rule 5.03 and the Revised Stipulation and Protective Order entered in this case (Dkt. No. 86), Defendants respectfully request that the Court grant them leave to file under seal their Opposition to Plaintiff's Motion for Review of Non-Dispositive Order of Magistrate Judge Concerning Lead Plaintiff's Motion to Compel (the "Motion for Review"). (Dkt. 213).

Defendants seek to seal the Opposition because it includes references to and quotes from Magistrate Judge Frensley’s April 30, 2020, Order Granting in Part and Denying in Part Lead Plaintiff’s Motion to Compel (the “Order”) (Dkt. 211) which was filed under seal. Defendants further request that Plaintiff’s Memorandum of Law in support of its Motion for Review

(“Plaintiff’s Memorandum”) (Dkt. 214) remain under seal because it, too, quotes extensively from the sealed Order.

Procedural History

On February 27, 2020, Plaintiff filed a Motion to Compel and moved the Court for leave to file documents supporting the motion conditionally under seal. (Dkt. 193, 194). The Court ordered Defendants to file a motion to continue the sealing of any confidential documents (Dkt. 198). Defendants filed a motion to continue sealing certain documents that Defendants claimed were privileged, protected by the attorney work product doctrine, and/or otherwise contained confidential information. (Dkt. 200). The Court granted that motion. On March 12, 2020, Defendants moved to file privileged and confidential documents in support of their Opposition to Plaintiff’s Motion to Compel under seal. (Dkt. 203). Again, the Court granted Defendants’ motion and sealed the documents at issue. On April 30, 2020, Magistrate Judge Frensley issued the Order under seal. (Dkt. 211). Plaintiff is now seeking the Court’s review of Magistrate Judge Frensley’s Order and, in connection with that review, moved the Court for leave to file its Memorandum under seal (Dkt. 212). The Court granted Plaintiff’s motion to file its Memorandum under seal (Dkt. 215).

Argument

Defendants respectfully request that the Court grant them leave to file the Opposition under seal because it includes references to, and quotes extensively from, the Order that is currently under seal. Likewise, Defendants further request that Plaintiff’s Memorandum remain under seal because it quotes extensively from the sealed Order.

Defendants have no opposition to the unsealing of (i) a version of the Order redacting the discussion of and quotations from the privileged documents; (ii) a version of the Plaintiff’s Memorandum redacted consistently with the Order; and (iii) a version of the Defendants’

Opposition redacted consistently with the Order. Magistrate Judge Frensley carefully considered and reviewed the privileged documents the parties submitted in connection with Plaintiff's Motion to Compel, and Defendants appreciate Magistrate Judge Frensley's sensitivity to the nature of these privileged communications.¹ Defendants have reviewed the Order and determined that only portions of it quotes from, or describes the substance of, privileged communications. Defendants are willing to submit a proposed version of the Order with the relevant privileged discussion and quotations redacted. If the Court is agreeable to Defendants' version of the Order with the discussion of the privileged information redacted, it is Defendants position that versions of Plaintiff's Memorandum and Defendants' Opposition can be unsealed in redacted form consistent with the redacted Order.

Conclusion

For the reasons set forth above, Defendants respectfully request that the Court grant this motion and direct the clerk to file under seal its Opposition to Plaintiff's Motion for Review and maintain the sealing of Plaintiff's Memorandum of Law in Support of its Motion for Review.

¹ It is well-established that privileged communications and attorney work product should be sealed. *See Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 2017 U.S. Dist. LEXIS 118712, at *2 (W.D. Ky. July 28, 2017) (“[I]nformation covered by a recognized privilege (such as the attorney-client privilege) . . . overcome[s] the presumption of open records [and should be sealed].”).

DATED: May 29, 2020

Respectfully submitted:

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this 29th day of May, 2020.

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